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Supreme Court, U.S.
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In The
Supreme Court of the United States

JAMES L. "JIMMY" FAHRENHOLTZ,

Petitioner,

versus

CONRAD S.P. WILLIAMS, III, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The Louisiana Fourth Circuit Court Of Appeal

PETITION FOR WRIT OF CERTIORARI

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A. QUESTIONS PRESENTED FOR REVIEW

1. Does the State of Louisiana's requirement that candidates not owe any State campaign or ethics fines amount to a new or additional condition precedent to, or qualification for, candidates for Congress?

2. Can the State of Louisiana or a Court of that State remove a candidate for Congress from the ballot for failure to pay state campaign finance or ethics fines?

B. A LIST OF ALL PARTIES

1. James L. "Jimmy" Fahrenholtz, Candidate for Congress
   Defendant and Petitioner

2. Conrad S.P. Williams, III
   Plaintiff and Respondent

3. Jay Dardenne, Louisiana Secretary of State and Commissioner of Elections
   Defendant and Respondent

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D. CITATIONS OF OPINIONS AND ORDERS

State District Court cases are not normally reported in Louisiana.

The Louisiana Court of Appeal Opinion is 08-CA-0961 and reported as:

Williams v. Fahrenholtz, ___ So. 2d ___, 2008 WL 2861718 (La. App. 4 Cir. 2008.)

The Louisiana Supreme Court denied Writ of Certiorari under Case No. 2008-C-1680. It is not yet reported on any service.

E. BASIS FOR JURISDICTION

Petitioner seeks review of the judgment entered by the State District Court on July 22, 2008 and AFFIRMED by the Louisiana Fourth Circuit Court of Appeal on July 25, 2008. The Louisiana Supreme Court DENIED Writ of Certiorari.

Jurisdiction is invoked pursuant to 28 U.S.C. §1257.

The Constitutionality of a statute of the State of Louisiana is drawn into question herein, however, the Louisiana Secretary of State is a party in his official capacity and therefore 28 U.S.C. §2403(b) does not apply. However, out of an abundance of caution, a copy of this Application has been served by U.S. Mail upon the Attorney General of Louisiana.

F. CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. Constitution, Article I, §2, clause 2:

> No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

U.S. Constitution, Article I, §4, clause 1:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

U.S. Constitution, Article I, §5, clause 1:

> Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

U.S. Constitution, Article VI, clause 2:

> This Constitution, and the Laws of the United States which shall be made in Pursuance

thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

2 U.S.C. §453. State laws affected

(a) In general

Subject to subsection (b) of this section, the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.

(b) State and local committees of political parties

Notwithstanding any other provision of this Act, a State or local committee of a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act for the purchase or construction of an office building for such State or local committee.

La. Constitution, Article V, §8. Courts of Appeal; Circuits; Panels; Judgments; Terms

Section 8.(A) Circuits; Panels. The state shall be divided into at least four circuits, with one court of appeal in each. Each court shall sit in panels of at least three judges selected according to rules adopted by the court.

(B) Judgments. A majority of the judges sitting in a case must concur to render judgment. However, in civil matters only, when a judgment of a district court is to be modified or reversed and one judge dissents, the case shall be reargued before a panel of at least five judges prior to rendition of judgment, and a majority must concur to render judgment.

(C) Terms. The term of a court of appeal judge shall be ten years.

La. R.S. 18:1275. United States senator and representative in Congress; qualifications

A. No person shall be a United States senator who has not attained the age of thirty years and who has not been a citizen of the United States for nine years and who is not, when elected, an inhabitant of this state.

B. No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

C. Notwithstanding any other provision of law to the contrary, the qualifications for United States senators and members of the United States House of Representatives as provided in this Section shall be exclusive.

La. R.S. 18:463

See Appendix

La. R.S. 18:1481, *et seq.*

§1481. Short title

This Chapter may be cited as the Campaign Finance Disclosure Act.

La. R.S. 18:1406

§1406. Petition; answer; notification

A. An action objecting to the calling of a special election, objecting to candidacy, or contesting an election shall be instituted by filing a petition in a court of competent jurisdiction and venue and posting a copy of the petition in a conspicuous place at the entrance of the office of the clerk of court where the petition is filed.

B. The petition shall set forth in specific detail the facts upon which the objection or contest is based. If the action contests an election, the petition shall allege that except for substantial irregularities or error, fraud, or other unlawful activities in the conduct of the election, the petitioner would have qualified for a second party primary election or for a general election or would have been elected. The trial judge may allow the filing of amended pleadings for good cause shown and in the interest of justice.

C. The defendant shall be served with citation directing him to appear in court no later

than 10:00 a.m. on the fourth day after suit was filed, subject, however, to the provisions of R.S. 18:1408(D). The defendant is not required to answer the petition, but if he answers, he shall do so prior to trial.

D. The clerk of court shall immediately notify the secretary of state by telephone and by written notice sent by certified mail, when an action objecting to the calling of a special election, objecting to candidacy, or contesting an election has been filed.

La. R.S. 18:1409

§1409. Trial; decision; appeal

A. (1) Actions objecting to the calling of a special election, objecting to candidacy, or contesting an election shall be tried summarily, without a jury, and in open court. The trial shall begin no later than 10:00 a.m. on the fourth day after suit was filed.

(2) If the defendant does not appear on the date set for the trial, either in person or through counsel, the court shall appoint an attorney at law to represent him by instanter appointment made prior to the commencement of the trial. In a case where a court appointment of an attorney to represent the defendant is made, the proceedings shall be conducted contradictorily against the court-appointed attorney.

(3)(a) The court shall determine the amount of the fee payable to curators ad hoc in accordance with criteria used by the court

in fixing curator fees under Code of Civil Procedure Article 5091 *et seq.*

(b) The court shall tax the curator's fee as costs, and such fee shall be paid by the plaintiff unless the defendant was served personally at least twenty-four hours prior to the hearing and the appointment of a curator ad hoc was necessitated by his failure to appear at the trial, in which case the court may require the defendant to pay the curator's fee.

B. (1) If the action involves the contest of a primary or first party primary election for a major office, the trial judge, for good cause shown, may postpone the date of the second party primary election or the general election for the office as to which the contest was filed for a period not to exceed five weeks. If the action involves the contest of a second party primary for a major office, the trial judge may, for good cause shown, so postpone the general election.

(2) Whenever the trial of an action contesting a primary or first or second party primary election for a major office, extends past 5:00 p.m. on the fourteenth day after the day of the election, the trial judge shall order the second party primary election and the general election, or the general election, as the case may be, for the affected office postponed to a Saturday specified by him which, for a second party primary election is at least thirty days after the date on which the trial court renders judgment and which for a general

election is at least thirty days after the second party primary election.

(3) As used in this Subsection, "major office" means offices voted on throughout the state or a congressional district, the offices of justice of the supreme court or judge of a court of appeal, the offices of members on a state board or commission, or offices which require election from a territorial jurisdiction having a population exceeding two hundred fifty thousand.

C. In all actions, the trial judge shall render judgment within twenty-four hours after the case is submitted to him and shall indicate the date and time rendered on the judgment. The clerk of the trial court shall immediately notify all parties or their counsel of record by telephone and/or facsimile transmission of the judgment.

D. Within twenty-four hours after rendition of judgment, a party aggrieved by the judgment may appeal by obtaining an order of appeal and giving bond for a sum fixed by the court to secure the payment of costs. The clerk of the trial court shall give notice of the order of appeal to the clerk of the court of appeal and to all the parties or their counsel of record. The trial judge shall fix the return day at a time not to exceed three days after rendition of judgment.

E. The clerk of the trial court shall prepare the record on appeal and transmit it to the clerk of the court of appeal on the return day.

F. Immediately upon receipt of the record the clerk of the court of appeal shall notify the parties and the case shall be heard no later than forty-eight hours after the record is lodged with the court of appeal. Judgment shall be rendered within twenty-four hours after the case is argued. The court of appeal shall indicate the date and time rendered on the judgment. The clerk of the court of appeal shall immediately notify all parties or their counsel of record by telephone and/or facsimile transmission of the judgment.

G. An application to the supreme court for a writ of certiorari shall be made within forty-eight hours after judgment is rendered by the court of appeal.

H. The appellate court shall sit en banc in all election contests involving candidates for offices voted on throughout the state or throughout a congressional district, justice of the supreme court, judge of a court of appeal, membership on a state board or commission, district judge, district attorney, or membership in the state legislature. In all other cases arising under this Chapter, the court may sit in panels of three or more as directed by the chief judge.

I. No application for a new trial or for a rehearing shall be entertained by any court, but a court, upon its own motion, may correct manifest error to which its attention is called.

> J. As used in this Chapter, judgment shall be deemed to have been rendered when signed by the judge.

G. STATEMENT OF THE CASE

On July 11, 2008, James L. "Jimmy" Fahrenholtz qualified as a candidate for election in the Democratic Primary for the office of Representative to Congress, for the Second Congressional District of Louisiana. On July 18, 2008 a challenge to Fahrenholtz's candidacy was filed in Civil District Court for the Parish of Orleans under the Louisiana Election Code (La. R.S. 18:1401, *et seq.*). That case was styled:

> CONRAD S.P. WILLIAMS, III vs. JAMES "JIMMY" FAHRENHOLTZ; and JAY DARDENNE, in his Official Capacity as Secretary of State and Commissioner of Elections for the State of Louisiana; Case No. 08-7459.

The Plaintiff's sole argument in challenging the legal qualifications of Fahrenholtz was that Fahrenholtz owes fines imposed by the Louisiana Board of Ethics pursuant to the Louisiana Campaign Finance Disclosure Act, and that, on the Notice of Candidacy – (Qualifying Form) which each and every candidate for public office in Louisiana must sign under oath, Fahrenholtz swore, under item #6 of that form:

> I do not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act, and I acknowledge that I am subject to the provisions of the Campaign

> Finance Disclosure Act *if I am a candidate for any office other than United States Senator, Representative in Congress*, or member of a committee of a political party. [R.S. 18:463A(2)(a), 18:1481, *et seq.*]

(*Emphasis added.*)

At trial, Fahrenholtz filed a Peremptory Exception of No Cause of Action, asserting that the Louisiana Campaign Finance Disclosure Act did not apply to candidates for Congress and, if it did apply, such application was an unconstitutional additional qualification on a congressional candidate in violation of U.S. Const. Art. I, §2, cl. 2, and La. R.S. 18:1275.

At trial of the matter, Judge Nadine Ramsey held that Fahrenholtz should be disqualified as a candidate for office, reasoning that item #6 (set forth *supra*) requires two separate certifications. They are:

> (1) that he is subject to the provisions of the Campaign Finance Disclosure Act if he is a candidate for any office other than the specified exempted offices, and (2) that he does not owe any outstanding fines or fees pursuant to the Campaign Finance Disclosure Act.

(See Reasons for Judgment, App. p. 24.)

Judge Ramsey further held that, while Fahrenholtz is not subject to the Campaign Finance Disclosure Act, he is nevertheless required to certify that he does not owe any money or fines under the Act, and therefore he must be disqualified as a candidate for

Congress. The State District Court did not address the issue of Constitutionality in its reasons for judgment.

Fahrenholtz timely filed an appeal to the Louisiana 4th Circuit Court of Appeal (Case No. 08-CV-0961). That court, sitting *en banc*, divided in a 5 to 5 decision to affirm the Judgment of the Trial Court.[1] Fahrenholtz, in his brief to that court, again raised the issue of Constitutionality of the applicability of the Louisiana Campaign Finance Disclosure Act and the Certification required under La. R.S. 18:463. However, the Court specifically refused to consider Constitutionality in its Opinion.

The Appellate Court stated in footnote 1 of its Opinion, the following:

> Mr. Fahrenholtz avers that the certification is an unconstitutional qualification. However, the constitutionality of a statute must first be questioned in the trial court and must be specifically pled. Specifically, 1) the constitutionality of a statute must first be questioned in the trial court, not the court of appeal; 2) the plea of unconstitutionality must be specifically pleaded to be considered by the trial court; and 3) the attorney general is an indispensable party who must be served. Mr. Fahrenholt's [sic] first mention of

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[1] La. Const. Art. V, §8(B) requires that, when an appellate court is divided evenly, the Judgment of the Trial Court must be Affirmed. (*Parfait v. Transocean Offshore*, 07-1915 and 07-1998, 980 So. 2d 634, 635.)

> unconstitutionality was in a memorandum and not in a pleading, hence, constitutionality is not an issue under review by this Court.

(Citations omitted.)

Fahrenholtz thereafter timely filed an application for Writ of Certiorari to the Louisiana Supreme Court. That court denied the writ application without reasons. (Case No. 08-1680.)[2]

In the present matter, petitioner Fahrenholtz was not given an opportunity to specifically plead the unconstitutionality of the statute as applied, because there was no unconstitutional application, and therefore no harm, until the State District Court rendered its decision. That is to say, there was no unconstitutional state action until the Court ordered the state to apply the Campaign Finance Disclosure Law (CFDL) to Fahrenholtz as a candidate.

This fact, coupled with the aggressively accelerated timeframe required in election/candidate challenge cases[3] make it an impossibility to affirmatively

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[2] Because the Louisiana Fourth Circuit Court of Appeal specifically refused to consider the issue of Constitutionality, Fahrenholtz, out of an abundance of caution and on advice of counsel, filed a suit in the United States District Court for the Eastern District of Louisiana. That case was dismissed on *res judicata* grounds. (Case No. 08-4098.) Fahrenholtz has appealed that Order of Dismissal to the United States Fifth Circuit Court of Appeals, where it remains pending. (Case No. 08-30779.)

[3] See La. R.S. 18:1406.

plead unconstitutionality at the trial level as a defendant. The court therefore, has denied Fahrenholtz of his Constitutional right to due process and a fair trial.

H. THE DECISIONS OF LOUISIANA COURTS ARE IN DIRECT CONFLICT WITH PREVIOUS RULINGS OF THE UNITED STATES SUPREME COURT

The first question at issue herein is, "Does the State of Louisiana's requirement that candidates not owe any State campaign or ethics fines amount to a new or additional condition precedent to, or qualification for, candidates for Congress?"

It is the position of the petitioner that, if the disclosure and penalty declaration requirements of La. R.S. 18:463 are applicable to Congress, as the State Court has adjudged, they amount to new and unconstitutional qualifications for that office.

The United States Constitution, Article I, §2, clause 2, states:

> No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

In addition, La. R.S. 18:1275 restates and emphasizes that these are the sole qualifications for Congress. That statute states, in relevant part:

> La. R.S. 18:1275 United States senator and representative in Congress; qualifications
>
> * * *
>
> B. No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.
>
> C. Notwithstanding any other provision of law to the contrary, the qualifications for United States senators and members of the United States House of Representatives as provided in this Section *shall be exclusive*.

(*Emphasis added.*)

Finally, the courts of Louisiana have clearly stated that the qualifications set forth in the Constitution are exclusive and that no other qualifications for congressional candidates may be imposed by the state. (See *Strong v. Breaux*, 612 So. 2d 111 (La. App. 1 Cir.), *writ denied*, 604 So. 2d 584 (La. 1992); and, *LaCombe v. McKeithen*, 877 So. 2d 48 (La. App. 1 Cir. 2004).

The Supremacy Clause of the United States Constitution (Art. VI, cl. 2), and the related jurisprudence clearly require that that the qualifications set

forth in Article I, §4, clause 1 are the only qualifications to become a candidate for Congress.

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

(U.S. Const. Art. VI, cl. 2.)

The Federal Constitution is the "supreme law of the land," and the obligation to guard and enforce every right secured by that Constitution rests on the state courts equally with the federal courts. *Smith v. O'Grady*, 312 U.S. 329, 61 S.Ct. 572, 85 L.Ed. 859 (1941). See also, *Dixon v. State*, 67 N.E.2d 138, 224 Ind. 327 (1946); *Iowa Motor Vehicle Ass'n v. Board of Railroad Com'rs*, 221 N.W. 364, 207 Iowa 461, *affirmed*, 280 U.S. 529, 50 S.Ct. 151, 74 L.Ed. 595 (1928). State courts are bound equally with the federal courts by the Federal Constitution and laws. *Public Service Commission of Utah v. Wycoff Co.*, 344 U.S. 237, 73 S.Ct. 236, 97 L.Ed. 291 (1952). No court, state or federal, may serve as an accomplice in the willful transgression of federal laws by which judges in every state are bound. *Lee v. State of Fla.*, 392 U.S. 378, 88 S.Ct. 2096, 20 L.Ed.2d 1166 (1968). Yet, that is exactly what has occurred here. The State Court has issued an opinion that, affirmed

by the State Appellate Court, renders moot the Supremacy Clause of the U.S. Constitution and the preemptive declaration of the federal campaign finance laws.

Specifically, the United States Code, Title 2, §453 declares all state campaign finance laws preempted. That law provides, in pertinent part, that:

> 2 U.S.C. §453. State laws affected
>
> (a) In general
>
> Subject to subsection (b) of this section, the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.

It is well established that the states cannot, in the exercise of control over local laws and practice, vest state courts with the power to violate the supreme law of the land. *Kalb v. Feuerstein*, 308 U.S. 433, 60 S.Ct. 343, 84 L.Ed. 370, *conformed to* 291 N.W. 840, 234 Wis. 507, *conformed to* 291 N.W. 841, 234 Wis. 509 (1940). It therefore falls to this Honorable Court to reverse the unconstitutional decision of the state courts and restore the supremacy of the U.S. Constitution.

It is clear then that no state may impose additional qualifications on candidates for Congress. Yet the State of Louisiana has done so.

The State Appellate Court has declared that the Louisiana Campaign Finance Disclosure Act and the

related declaration on the Notice of Candidacy – Qualifying Form is NOT an additional qualification, but rather a permissible regulation of the time, place and manner of elections within its jurisdiction. This is utterly and completely incorrect application of the law.

While it is true that this Honorable Court has held that "[s]tates are entitled to adopt 'generally applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process itself.'" *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), *quoting Anderson v. Celebreeze*, 460 U.S. 780, 788, n.9 (1983).

The State Court reasoned that,

> The Legislature of Louisiana, necessarily vested with the power of prescribing regulations governing the election of its public officials, has determined that candidates must certify that they do not owe any outstanding fines, fees, or penalties pursuant to the CFDA [(Campaign Finance Disclosure Act)]. These statutes and this determination come before us with a presumption of validity, a very strong presumption in statutes regulating the conduct of elections. In *Louisiana State Bd. of Ethics v. Garrett*, 06-0263, p. 6 (La. App. 4 Cir. 3/21/06), 929 So. 2d 176, 179-180, this Court expounded on the CFDA's purpose as follows: The purpose of the CFDA is to ensure that constituents are knowledgeable with respect to the financing of election campaigns.

The court continued to opine that it,

> . . . we do not find that the questioned statute imposes substantial qualifications upon the right to hold the office. Rather, the statute enforces legitimate state interests in governing campaign finance and a duty to protect the integrity of the political process.

Contrary to the opinion of that court, this interpretation amounts to an egregious and substantial intrusion upon the Constitution.

It is undisputed that the several states may regulate the time, place and manner of elections within their respective borders. However, such regulations may not impose new restrictions or qualifications upon candidates for Congress.

This present matter is comparable to the case of *U.S. Term Limits, Inc. v. Thornton, supra*. In that case, this Honorable Court declared that term limits on congressional candidates amounts to the state "adding to or altering the qualifications specifically enumerated in the Constitution." The state's argument that the term limits law was merely a regulation of the "time, place and manner" of the election was found to be without merit.

Further, the present case is distinguishable from *Joyner v. Mofford*, 706 F.2d 1523 (9th Cir. 1983) and *Signorelli v. Evans*, 637 F.2d 853 (2d Cir. 1980). In those cases, persons wishing to run for an office other than the one which they currently held, had to resign upon qualifying for election to the new office. While

this Honorable Court found the rule to be permissible, it is clear that such regulations applied to the candidates' holding of STATE office, and not FEDERAL office. That is, holders of state office had to resign in order to run for Congress. It had no direct impact on the qualifications for a congressional candidate, but rather had an impact on state office-holders. This is NOT the case herein. The Louisiana Campaign Finance Disclosure Act (CFDA) has a direct and impeding effect on candidates for Congress. It is not just a regulation of state office-holders, but a regulation of ALL office-holders within its jurisdiction, whether state or federal.

While the CFDA regulation itself may seem reasonable to some, it is not the court's providence to allow or disallow what it may or may not find to be a reasonable condition for qualifications for office. It falls to this Honorable Court only to determine if Louisiana's Campaign Finance Disclosure Act is a new condition or qualification for office, and to declare it unconstitutional as applied to congressional candidates.

The second question to be asked herein is whether the State of Louisiana (or a Court of that state) can remove a candidate for Congress from the ballot for failure to pay state campaign finance or ethics fines?

The answer is clearly "NO."

The State Court removed Fahrenholtz from the ballot for election to Congress. In the State Court, the

Plaintiff's sole argument in challenging the legal qualifications of Fahrenholtz was that Fahrenholtz owes fines imposed by the Louisiana Board of Ethics pursuant to the Louisiana Campaign Finance Disclosure Act, and that, on the Notice of Candidacy – (Qualifying Form) which each and every candidate for public office in Louisiana must sign under oath, Fahrenholtz swore, under item #6 of that form that:

> I do not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act, and I acknowledge that I am subject to the provisions of the Campaign Finance Disclosure Act *if I am a candidate for any office other than United States Senator, Representative in Congress*, or member of a committee of a political party. [R.S. 18:463A(2)(a), 18:1481, *et seq.*]

(*Emphasis added.*)

At trial of this matter, Judge Nadine Ramsey held that Fahrenholtz should be disqualified as a candidate for office, reasoning that item #6 of the sworn statements requires two separate certifications. They are: (1) that he is subject to the provisions of the Campaign Finance Disclosure Act if he is a candidate for any office other than the specified exempted offices, and (2) that he does not owe any outstanding fines or fees pursuant to the Campaign Finance Disclosure Act. (See Reasons for Judgment, Appendix, p. 24.)

Judge Ramsey further held that, while Fahrenholtz is not subject to the Campaign Finance Disclosure Act, he is nevertheless required to certify that he does not owe any money or fines under the Act, and therefore he must be disqualified as a candidate for Congress. This is a distinction without a difference, and clearly amounts to an unconstitutional additional qualification on a candidate for Congress imposed by the state.

What makes this case unique is that the unconstitutional application of the state law to the appellant was NOT done by the Executive Branch, but by the Judicial Branch.[4] There was no Constitutional violation until the State Court made its decision. At that point, it is too late under the Louisiana Rules of Civil Procedure, to affirmatively plead unconstitutionality. Under this scenario, no candidate will ever be able to make such a plea and the unconstitutional acts of the State shall go unfettered.[5]

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[4] Although the offending interpretation was made by the State Court, its Order requires the Secretary of State to remove the Appellant from the ballot, and therefore he is the proper party herein, not the Court itself.

[5] To be certain, Fahrenholtz argued in his Memoranda and Briefs in the State Courts that the statute in question does not apply to candidates for Congress, and that if it would be applied, such application would be unconstitutional, however, because there was as yet no constitutional harm, such a plea could not be made preemptively or affirmatively in a pleading. Therefore, the courts would not and did not consider Constitutionality.

It is the position of Mr. Fahrenholtz that the State Courts have no jurisdiction to remove a candidate from the ballot for Congress unless he or she is in violation of the qualifications set forth in the Constitution and declares so. That is, for example, if a candidate declares that he or she is 18 years of age, then that candidate may be removed from the ballot. This is in keeping with the state's duty and authority to conduct free and fair elections. However, if there is any dispute as to the qualifications for a congressional candidate, the courts of any of the several states are without authority to disqualify them from running for office.

The United States Constitution, Article I, Section 5, clause 1, states that, "Each House shall be the judge of the elections, returns and qualifications of its own members." Therefore, the Constitution totally preempts the state court's authority to determine qualifications of congressional candidates. This is a long-standing and inviolate rule. "A state court cannot determine the right to the office of congressmen . . . " *McDill v. Board of State Canvassers*, 36 Wis. 498 (1874). Further, "The power of each House of Congress as judge of the qualifications and legality of election of its members is supreme. . . ." *Keogh v. Horner*, 8 F.Supp. 933 (S.D.Ill. 1934).

Therefore, it is clear that the state court 1) had no authority to remove a congressional candidate from the ballot, yet unconstitutionally removed Fahrenholtz; and 2) improperly interpreted and applied

Louisiana's CFDA to a congressional candidate, setting forth an additional and unconstitutional qualification for congressional office.

WHEREFORE, petitioner prays that, after due proceedings had, an order issue from this Honorable Court forthwith, restraining Jay Dardenne, in his Official Capacity as Louisiana Secretary of State and Commissioner of Elections, from removing the name of James L. "Jimmy" Fahrenholtz from the ballot for election on September 6, 2008 for the Democratic Party primary election as candidate for the U.S. House of Representatives, District 2, and declare that La. R.S. 18:463 and La. R.S. 18:1481, *et seq.*, do not apply to any candidate for federal office, including candidates for the U.S. House of Representatives, and, if necessary, to issue an order delaying the election for Representative to Congress, Louisiana's Second Congressional District.

Respectfully submitted,

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2008 WL 2861718 (La.App. 4 Cir.)

Court of Appeal of Louisiana, Fourth Circuit.

Conrad S.P. WILLIAMS, III

v.

James "Jimmy" FAHRENHOLTZ; and Jay Dardenne, In his Official Capacity as Secretary of State and Commissioner of Elections for the State of Louisiana.

No. 2008-CA-0961.

July 25, 2008.

Appeal from Civil District Court, Orleans Parish, No.2008-7459, Division "J-13", Honorable Nadine M. Ramsey, Judge.

Charles C. Bourque, Jr., Joseph G. Jevic, III, Melanie G. Lagarde, St. Martin Williams & Bourque, Houma, LA, and Benjamin D. Beychok, Beychok Law Firm, Baton Rouge, LA, for Conrad S.P. Williams, III.

Frank A. Milanese, Frank A. Milanese, PLC, New Orleans, LA, for James "Jimmy" Fahrenholtz.

Celia R. Cangelosi, Baton Rouge, LA, for Jay Dardenne, In his Official Capacity as Secretary of State.

(Court composed of Chief Judge JOAN BERNARD ARMSTRONG, Judge CHARLES R. JONES, Judge PATRICIA RIVET MURRAY, Judge JAMES F. McKAY, III, Judge MICHAEL E. KIRBY, Judge TERRI F. LOVE, Judge MAX N. TOBIAS, JR., Judge EDWIN A. LOMBARD, Judge ROLAND L. BELSOME, Judge Pro Tempore Moon Landrieu).

TERRI F. LOVE, Judge.

This appeal arises from the qualifying period for the United States House of Representatives from the Second Congressional District primary election. James "Jimmy" Fahrenholtz, appeals a trial court judgment disqualifying him as a candidate for the office of United States House of Representatives from the Second Congressional District, in the September 6, 2008 primary election. For the reasons that follow, we find that the trial court correctly found that James "Jimmy" Fahrenholtz falsely certified on his notice of candidacy that he did not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act as provided in La. R.S. 18:463(A)(2).

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

James "Jimmy" Fahrenholtz ("Mr.Fahrenholtz"), an Orleans Parish School Board member, qualified to run for the United States House of Representatives from the Second District, by filing his Notice of Candidacy (Qualifying Form) ("Form") on July 11, 2008, with the Louisiana Secretary of State's office. Mr. Fahrenholtz certified that he did not "owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act. . . ." *See* La. R.S. 18:1481 *et seq.*

Conrad Williams, III ("Mr.Williams") filed a petition to disqualify the candidacy of Mr. Fahrenholtz alleging that he "made a false representation in

his Notice of Candidacy" that he did not owe outstanding fines, fees, or penalties. Mr. Williams alleged that Mr. Fahrenholtz owed more than $31,000 in outstanding fines payable to the Campaign Finance Oversight Board for failing to file campaign finance reports or filing late reports. Therefore, Mr. Williams asserted that Mr. Fahrenholtz violated La. R.S. 18:1274, La. R.S. 18:463(A)(2)(a) and La. R.S. 18:492(5). Mr. Fahrenholtz then filed an exception of no cause of action asserting that candidates for the United States House of Representatives were exempt from the Campaign Finance Disclosure Act ("CFDA").

The trial court conducted a hearing on the matter on July 22, 2008. While the amount Mr. Fahrenholtz allegedly owed was disputed, the record reflects and the parties stipulated that Mr. Fahrenholtz owed approximately $15,000 in outstanding fines. The trial court overruled Mr. Fahrenholtz's peremptory exception of no cause of action and granted Mr. Williams' petition to disqualify finding that Mr. Fahrenholtz was governed by La. R.S. 18:463(A)(2)(a). It then disqualified Mr. Fahrenholtz based upon false certification, pursuant to La. R.S. 18:492, due to the outstanding fines and fees.

Mr. Fahrenholtz filed this timely appeal on July 23, 2008, asserting that the trial court incorrectly applied the CFDA to candidates for the United States House of Representative from the Second District.

Mr. Fahrenholtz assigns error to the judgment of the trial court by asserting that: 1) state election

finance laws are preempted by the federal campaign finance law; 2) state law does not contemplate that federal candidates could be disqualified by failure to make the "certification;" 3) the language of the qualifying form expressly exempted federal candidates from compliance; and 4) the United States Constitution lists exclusive qualifications for United States Congressional office.

NO CAUSE OF ACTION

The peremptory exception of no cause of action is a legal question pursuant to La. C.C.P. art. 927. Questions of law are reviewed by appellate courts using the *de novo* standard of review. *Gutierrez v. Moezzi,* 06-1395, p. 8 (La.App. 4 Cir. 4/11/07), 957 So.2d 842, 847. Additionally, election laws should be interpreted in favor of candidacy. *Becker v. Dean,* 03-2493, p. 7 (La. 9/18/03), 854 So.2d 864, 869.

Mr. Fahrenholtz filed a peremptory exception of no cause of action alleging that he was not subject to the CFDA. The appellant maintains that "[t]he qualifications for **members** of the United States House of Representatives are found in the United States Constitution at Article I, Section 2, Clause 2. The Qualifications Clause ("Qualifications Clause") of the United States Constitution provides:

> Section 2, Clause 2. Qualifications of Members
>
> No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of

> the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Further, the Elections Clause of the United States Constitution (U.S. Const.Art.I, § 4, cl.1) provides that state legislatures shall prescribe the times, places and manner of congressional elections; however, Congress is expressly given authority to make or alter such state regulations. Under this constitutional authority, states have the right to create those laws and regulations necessary to ensure the integrity and reliability of the election process.

Mr. Fahrenholtz asserts that the qualifications set forth in the Qualifications Clause are exclusive and that state law can not add to or take away from the stipulated qualifications therein.[1] However, the United States Supreme Court has found that "[s]tates

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[1] Mr. Fahrenholtz avers that the certification is an unconstitutional qualification. However, the constitutionality of a statute must first be questioned in the trial court and must be specifically pled. *Vallo v. Gayle Oil Co., Inc.*, 94-1238 (La.11/30/94), 646 So.2d 859, 863. Specifically, 1) the constitutionality of a statute must first be questioned in the trial court, not the court of appeal; 2) the plea of unconstitutionality must be specifically pleaded to be considered by the trial court; and 3) the attorney general is an indispensable party who must be served." Id., *citing Lemire v. New Orleans Public Service, Inc.*, 458 So.2d 1308, 1311 (La.1984). Mr. Fahrenholt's [sic] first mention of unconstitutionality was in a memorandum and not in a pleading, hence, constitutionality is not an issue under review by this Court. *Hillman v. Akins*, 93-0631, (La.1/14/94), 631 So.2d 1, 5.

are entitled to adopt 'generally applicable and even-handed restrictions that protect the integrity and reliability of the electoral process itself.'" *U.S. Term Limits, Inc. v. Thornton,* 514 U.S. 779 (1995), *quoting Anderson v. Celebreeze,* 460 U.S. 780, 788, n. 9 (1983). "These justifications are substantial, and reflect a legitimate and compelling state interest in orderly, consistent, and honest government." *Joyner v. Mofford,* 706 F.2d 1523, 1533 (1983).

The Legislature of Louisiana, necessarily vested with the power of prescribing regulations governing the election of its public officials, has determined that candidates must certify that they do not owe any outstanding fines, fees, or penalties pursuant to the CFDA. These statutes and this determination come before us with a presumption of validity, a very strong presumption in statutes regulating the conduct of elections.

In *Louisiana State Bd. of Ethics v. Garrett,* 06-0263, p. 6 (La.App. 4 Cir. 3/21/06), 929 So.2d 176, 179-180, this Court expounded on the CFDA's purpose as follows:

> The purpose of the CFDA is to ensure that constituents are knowledgeable with respect to the financing of election campaigns. It is imperative that the electorate has such information in a timely manner. The CFDA ensures this purpose by setting forth filing deadlines prior to and subsequent to an election. Candidates failing to file reports by the deadlines are subject to the imposition of late

> fees for failing to meet the statutory deadlines imposed.

In the matter *sub judice,* we do not find that the questioned statute imposes substantial qualifications upon the right to hold the office. Rather, the statute enforces legitimate state interests in governing campaign finance and a duty to protect the integrity of the political process. Thus, the trial court correctly overruled Mr. Fahrenholtz's exception of no cause of action.

Objection to Candidacy

This case is *res nova* relative to the application of La. R.S. 18:463 to a candidate for a congressional office.

The Louisiana Board of Ethics ("Board"), as the Supervisory Committee on Campaign Finance Disclosure, is statutorily charged with the duty of enforcing the CFDA pursuant to La. R.S. 18:1511.1(A). The Board is authorized by La. R.S. 42:1157 to automatically assess late fees for reports that are not timely filed according to the CFDA. La. R.S. 18:1505.4. The CFDA requires candidates for public office to file reports concerning the financing of their campaigns at scheduled intervals prior to and after an election. La. R.S. 18:1495.4(B) & 18:1532.

However, La. R.S. 18:1274 requires that:

> [a]ny person desiring to become a candidate in a primary election for United States

> senator or representative in Congress shall file notification of his candidacy and declaration of his qualifications as provided for state candidates in Chapter 5 of this Title.

The manner of qualifying for election to public office in Louisiana is set forth in La. R.S. 18:461(A)(1), which provides, in pertinent part, that "[a] person who desires to become a candidate in a primary election shall qualify as a candidate by timely filing notice of his candidacy." The information that must be included in a notice of candidacy is detailed as follows in La. R.S. 18:463(A)(1)(a):

> A notice of candidacy shall be in writing and shall state the candidate's name, the office he seeks, the address of his domicile, the parish, ward, and precinct where he is registered to vote, and the political party, if any, with which he is registered as being affiliated.

Louisiana Revised Statutes 18:463(A)(2)(a) and (b) require a candidate to certify at the time of qualifying that he or she owes no outstanding fines pursuant to the CFDA:

> § 463. Notice of Candidacy; financial statements; political advertising; penalties
>
> (2)(a) The notice of candidacy also shall include a certificate, signed by the candidate, certifying that he has read the notice of his candidacy, that he meets the qualifications of the office for which he is qualifying, that he

is not currently under an order of imprisonment for conviction of a felony, that he is not prohibited from qualifying as a candidate for conviction of a felony pursuant to Article I, Section 10 of the Constitution of Louisiana, that he has attached to the notice of his candidacy the financial statement required by Subsection B of this Section, if applicable, that he acknowledges that he is subject to the provisions of the Campaign Finance Disclosure Act (R.S. 18:1481 et seq.) if he is a candidate for any office other than United States senator, representative in congress, or member of a committee of a political party, that he does not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act, and that all of the statements contained in it are true and correct. The certificate shall be executed before a notary public or shall be witnessed by two persons who are registered to vote on the office the candidate seeks. If the candidate is serving outside the state with the armed forces of the United States, his notice of candidacy shall be witnessed by a commissioned officer in the armed forces of the United States.

(b) For the purposes of this Paragraph, "outstanding fine, fee, or penalty" shall mean a fine, fee, or penalty equal to an amount of two hundred fifty dollars or more assessed by order of the Supervisory Committee on Campaign Finance Disclosure pursuant to the Campaign Finance Disclosure Act which has been converted into a court order for which

> all appeals have been exhausted or a judgment of a district court assessing civil penalties pursuant to the Campaign Finance Disclosure Act which has become executory pursuant to R.S. 18:1511.5. "Outstanding fine, fee, or penalty" shall not mean any fine, fee, or penalty which has been paid in full or for which the candidate is in compliance with a payment plan established in writing between the Supervisory Committee on Campaign Finance Disclosure and the candidate.

Objections to candidacy are governed by La. R.S. 18:1401(A), which provides that "[a] qualified elector may bring an action objecting to the candidacy of a person who qualified as a candidate in a primary election for an office in which the plaintiff is qualified to vote." The Election Code establishes that a false certification in this regard that is set forth in the "Notice of Candidacy" is a ground for disqualification of the candidate as follows:

> La. R.S. 18:492(A)(5) provides:
>
> A. An action objecting to the candidacy of a person who qualified as a candidate in a primary election shall be based on one or more of the following grounds:
>
> . . . .
>
> (5) The defendant falsely certified on his notice of candidacy that he does not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act as provided in R.S. 18:463(A)(2).

The burden of proof and applicable principles in an election matter were enunciated by the Louisiana Supreme Court in *Landiak v.. Richmond,* 05-0758, pp. 9-11 (La.3/24/05), 899 So.2d 535, 542-44:

> Because election laws must be interpreted to give the electorate the widest possible choice of candidates, a person objecting to candidacy bears the burden of proving that the candidate is disqualified. See *Becker v. Dean,* 03-2493, p. 7 (La.9/18/03), 854 So.2d 864, 869; *Russell v. Goldsby,* 00-2595, p. 4 (La.9/22/00), 780 So.2d 1048, 1051; *Dixon v. Hughes,* 587 So.2d 679, 680 (La.1991); *Messer v. London,* 438 So.2d 546 (La.1983). . . . Further, a court determining whether the person objecting to candidacy has carried his burden of proof must liberally construe the laws governing the conduct of elections "so as to promote rather than defeat candidacy." *Becker,* 03-2493 at 7, 854 So.2d at 869; *Russell,* 00-2595 at 4, 780 So.2d at 1051; Dixon, 587 So.2d at 680. Any doubt concerning the qualifications of a candidate should be resolved in favor of allowing the candidate to run for public office. *Becker,* 03-2493 at 7, 854 So.2d at 869; *Russell,* 00-2595 at 4, 780 So.2d at 1051; *Dixon,* 587 So.2d at 680.

Qualifying Form Exemption

Mr. Fahrenholtz avers that the Form exempts federal candidates from compliance. Paragraph six on the Form states:

> I do not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act, **and** I acknowledge that I am subject to the provisions of the Campaign Finance Disclosure Act if I am a candidate for any office other than United States Senator, Representative in Congress, or member of a committee of a political party [R.S. 18:463A(2)(a), 18:1481, et seq.] (Emphasis added).

Mr. Fahrenholtz is correct in that the Form does not contain the exact wording of La. R.S. 18:463. However, the provision clearly has two distinct independent clauses separated by a conjunction. We can discern no difference in the meaning between the language of the statute and that used on the form. Mr. Fahrenholtz violated the first clause when he falsely certified that he did not owe any outstanding fines. Therefore, we find this assertion lacks merit.

The record reflects that Mr. Fahrenholtz owed approximately $15,000 in fines. We find that there was sufficient evidence presented by Mr. Williams to establish a *prima facie* case for disqualification based on a false certification in the "Notice of Candidacy" filed by Mr. Fahrenholtz.

CONCLUSION

For the above stated reasons, we find that the trial court correctly disqualified Mr. Fahrenholtz as a candidate in the Second Congressional District for the United States House of Representatives.

However, since the Court is equally divided on the correctness of the lower court's ruling, the decree will be contained in a separate per curiam.

McKAY, J., concurs.

MURRAY, J., Dissents and Assigns Reasons.

TOBIAS, J., Dissents and Assigns Reasons.

LOMBARD, J., Dissents.

BELSOME, J., Dissents for the Reasons Assigned by Judge MURRAY.

LANDRIEU, J. PRO TEMPORE, Dissents with Reasons. PER CURIAM.

In this appeal by James "Jimmy" Fahrenholtz, five judges[1] would affirm the trial court and five judges would reverse the trial court. Pursuant to La. Const. Art. V, § 8(B) *Parfait v. Transocean Offshore,* 07-1915 and 07-1998, p. 1 (La.3/14/08), 980 So.2d 634, 635, the judgment of the trial court is affirmed, in that this Court could not render a majority decree.

LANDRIEU, J. PRO TEMPORE, Dissents with Reasons.

I respectfully dissent from the majority's opinion upholding the trial court's judgment disqualifying Mr.

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[1] One member of the Court was recused and one was unavailable.

Fahrenholtz as a candidate in the Second Congressional District for the United States House of Representatives and adopt the reasons assigned by Judge Murray and Judge Tobias.

As further amplification of the ambiguity, paragraph 6 of the qualifying form could be understood as follows:

If I am a candidate for any office other than United States Senator, Representative in Congress, or member of a committee of a political party, I acknowledge that I am subject to the provisions of the Campaign Finance Disclosure Act and I do not owe any outstanding fines, fees or penalties pursuant to the Campaign Finance Disclosure Act.

TOBIAS, J., Dissents and Assigns Reasons.

I respectfully dissent although I agree with the decree in accordance with *Parfait v. Transocean Offshore*, 07-1915 and 07-1998 (La.3/14/08), 980 So.2d 635.

A review of the record reveals that defendant/appellant, James "Jimmy" Fahrenholtz, timely submitted all documents and fees required to qualify as candidate for the United States House of Representatives, Second Congressional District. Pursuant to instructions from the Louisiana Secretary of State, Fahrenholtz executed a form entitled "Notice of Candidacy – (Qualifying Form)", which contained the following language:

> 6. I do not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act, and I acknowledge that I am subject to the provisions of the Campaign Finance Disclosure Act if I am a candidate for any office other than United States Senator, Representative in Congress, or member of a committee of a political party [R.S. 18:463A(2)(a), 18:1481, et seq.]

It is undisputed that Fahrenholtz has outstanding fines payable to the Campaign Finance Oversight Board in an approximate amount of $15,000.00; the fines are a matter of public record. However, believing that Campaign Finance Disclosure Act does not apply to candidates for the United States Congress, Fahrenholtz signed the certification.

Plaintiff/Appellee, Conrad S.P. Williams, III, filed the instant lawsuit against Fahrenholtz and Jay Dardenne, in his official capacity as Secretary of State and Commissioner of Elections for the State of Louisiana, to disqualify Fahrenholtz from running for federal office on the ground that his notice of candidacy certification regarding outstanding state campaign finance fines was "false."

The trial court rendered judgment on 22 July 2008, disqualifying Fahrenholtz as a candidate for the Second Congressional District for the United States House of Representatives. Fahrenholtz has filed the instant appeal, arguing that state election finance laws are preempted by federal law.

Article I, § 2, cl. 2 of the United States Constitution states:

> No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

In recognition of federal law, Louisiana has adopted the requirements to run for federal office in La. R.S. 18:1275:

> A. No person shall be a United States senator who has not attained the age of thirty years and who has not been a citizen of the United States for nine years and who is not, when elected, an inhabitant of this state.
>
> B. No person shall be a representative in Congress who has not attained the age of twenty-five years and who has not been a citizen of the United States for seven years and who is not, when elected, an inhabitant of this state.
>
> C. Notwithstanding any other provision of law to the contrary, **the qualifications** for United States senators and members of the United States House of Representatives **as provided in this Section shall be exclusive**. [Emphasis added.]

Against this backdrop, we were called upon to examine La. R.S. 18:463, which sets forth the

requirements for filing a notice of candidacy. One of the requirements states that the notice of candidacy include a certificate signed by the candidate certifying that he does not owe any outstanding fines, fees, or penalties pursuant to the Louisiana Campaign Finance Disclosure Act, **and** that all statements contained in the notice are true and correct. La. R.S. 18:492 provides the grounds for objecting to a candidacy, stating in pertinent part:

> A. An action objecting to the candidacy of a person who qualified as a candidate in a primary election shall be based on one or more of the following grounds:
>
> * * *
>
> (5) The defendant falsely certified on his notice of candidacy that he does not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act as provided in R.S. 18:463(A)(2).

Reviewing again the notice of candidacy, I find this part of the form to be conjunctive.[1] It states that the candidate owes no outstanding fines, fees or penalties **and** is subject to the Campaign Finance Disclosure Act. Given that a candidate running for a

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[1] "I do not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act, **and** I acknowledge that I am subject to the provisions of the Campaign Finance Disclosure Act if I am a candidate for any office other than United States Senator, Representative in Congress, or member of a committee of a political party." [Emphasis added.]

Representative in Congress is not subject to the Campaign Finance Disclosure Act, the conjunctive language of the form is ambiguous. Based on the jurisprudence, such ambiguity must be construed in favor of allowing the candidate to run for office. As the Louisiana Supreme Court has stated, "[t]he laws governing the conduct of elections must be liberally interpreted so as to promote rather than defeat candidacy. Any doubt as to the qualifications of a candidate should be resolved in favor of permitting the candidate to run for public office." *Russell v. Goldsby,* 00-2595, p. 4 (La.9/22/00), 780 So.2d 1048, 1051, *citing Dixon v. Hughes,* 587 So.2d 679 (La.1991).

It is undisputed that candidates for federal office are subject to the Federal Election Campaign Act ("FECA"), 2 U.S.C.A. § 431 *et seq.*, whereby all federal campaign funds must be timely and accurately reported to the Federal Election Commission. It is further undisputed that candidates for federal office are not subject to Louisiana's Campaign Finance Disclosure Act, La. R.S. 18:1481, *et seq.*[2]

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[2] 2 U.S.C.A. § 453(a), of the Federal Election Campaign Act ("FECA") provides:

> Subject to subsection (b) of this section, the provisions of this Act, and of rules prescribed under this Act, **supersede and preempt any provision of State law** with respect to election to Federal office. [Emphasis added.]

Thirty-nine years ago, in *Powell v. McCormack*, 395 U.S. 486, 89 S.Ct. 1944 (1969), the United States Supreme Court reviewed the history and text of the Qualifications Clauses[3] in a case involving an attempted exclusion of a duly elected Member of Congress. The principal issue was whether the power granted to each House in Art. I, § 5, cl.1, to judge the "Qualifications of its own Members" included the power to impose qualifications other than those set forth in the text of the Constitution. In the majority opinion, the Court held that it did not. Id. at 522, 89 S.Ct. at 1964.

It stands to reason that if Congress is without the power to impose any additional qualifications on it [sic] own members, then the Louisiana Legislature is likewise powerless to do so. However, were Fahrenholtz permitted to run for federal office, subsequently winning election, the Congress would be the appropriate entity to judge Fahrenholtz's qualifications in light of the alleged false certification in his Notice of Candidacy filed with the Louisiana Secretary of State.

In *United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S.Ct. 1842, 1847 (U.S.1995), the Court struck down an amendment to the Arkansas Constitution that prohibited the name of an otherwise eligible candidate for Congress from appearing on the general ballot if that candidate had already

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[3] *See* U.S. Const. Art. I, § 2.

served a specified number of terms. The Court framed the issue in terms of "whether the Constitution forbids States from adding to or altering the qualifications specifically enumerated in the Constitution." The Court explicitly referred to term limits as "qualifications." Id. at 780, 115 S.Ct. at 1844 ("[t]erm limits, like any other qualification for office, unquestionably restrict the ability of voters to vote for whom they wish."). Similarly, the Court repeatedly used the term "qualifications" to refer to the age and residency requirements for membership in the United States Congress. The Court ultimately held that the challenged term limits amendment imposed an additional and unconstitutional "qualification" upon Congressional candidates that would effect a fundamental change in the Federal constitutional framework. Id. at 781, 115 S.Ct. at 1845.

Because I find the certification in the Notice of Candidacy ambiguous and in violation of both state and federal law by imposing an additional qualification on the ability of one to run for federal office, I would reverse the trial court and permit Fahrenholtz to run for United States House of Representatives, Second Congressional District.

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS

STATE OF LOUISIANA

No: 08-7459 DIVISION "J"

CONRAD S.P. WILLIAMS, III

VERSUS

JAMES "JIMMY" FAHRENHOLTZ AND
JAY DARDENNE, in his official capacity as
Secretary of State and Commissioner of Elections
for the State of Louisiana

Judgment

This matter came for trial on July 22, 2008. The trial concluded at 9:35 a.m. and was taken under advisement.

Present were:

Joseph Jevic (23145) and **Benjamin Beychok** (24755), representing plaintiff Conrad S.P. Williams, III

Frank Milaneso (1961), representing defendant James "Jimmy" Fahrenholtz

William E. Crawford, Jr. (24061) and **Celia Cangelosi** (12140), representing defendant **Jay Dardenne**

After reviewing the pleadings, the evidence, the arguments of counsel, the applicable law, and the stipulations,

IT IS ORDERED, ADJUDGED, and DECREED that plaintiff's request for an entry of judgment **disqualifying** James "Jimmy" Fahrenholtz's candidacy for the Second Congressional District for the United States House of Representatives is hereby **GRANTED**. James "Jimmy" Fahrenholtz in hereby disqualified from candidacy for the Second Congressional District for the United States House of Representatives.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that defendant James "Jimmy" Fahrenholtz's peremptory exception of No Cause of Action is hereby **OVERRULED**.

Signed at New Orleans, Louisiana, this 22 day of July, 2008 at 11:59 a.m.

/s/ Nadine Ramsey
Nadine M. Ramsey, Judge

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS

STATE OF LOUISIANA

No: 08-7459 DIVISION "J"

CONRAD S.P. WILLIAMS, III

VERSUS

JAMES "JIMMY" FAHRENHOLTZ AND
JAY DARDENNE, in his official capacity as
Secretary of State and Commissioner of Elections
for the State of Louisiana

Reasons for Judgment

This matter arises out of a Petition to Disqualify Candidate filed by plaintiff Conrad S.P. Williams, III. In his petition, plaintiff alleges that James "Jimmy" Fahrenholtz has filed for candidacy for the Second Congressional District for the United States House of Representatives in violation of La. R.S. 18:1274, La. R.S. 18:403(A)(2)(a), and 18:492(5) by falsely certifying on his notice of candidacy that he does not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act, La. R.S. 18:1481 *et seq*. Accordingly, plaintiff seeks a judgment disqualifying James "Jimmy" Fahrenholtz's candidacy for the Second Congressional District for the United States House of Representatives. In response, Fahrenholtz filed a Peremptory Exception of No Cause of Action asserting that he is not subject to the Campaign Finance Disclosure Act.

This matter came for trial on July 22, 2008. Trial concluded at 9:35 a.m., and the matter was taken under advisement. Plaintiff Williams, defendant Jay Dardenne, and defendant Fahrenholtz were all represented by counsel at trial.

As noted by plaintiff, La. R.S. 18:1274 requires that "[a]ny person desiring to become a candidate in a primary election for United States senator or representative in congress shall file notification of his candidacy and declaration of his qualifications as provided for state candidates in Chapter 5 of this Title." On July 11, 2008, defendant Fahrenholtz filed his notice of candidacy for the Second Congressional District for the United States House of Representatives. A copy of his notice of candidacy is attached as Exhibit A to his Exception of No Cause of Action.

On the candidacy form, a candidate must certify "that he does not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act," La. R.S. 18:463(A)(2). Plaintiffs have alleged that Fahrenholtz owes $31,378.47 in outstanding campaign finance late fees and fines. At trial, Fahrenholtz disputed the amount owed, but the parties stipulated that Fahrenholtz did have outstanding fines in the approximate amount of $15,000.

Fahrenholtz contends that while he does owe outstanding fines, he is not subject to disqualification from candidacy. Fahrenholtz asserts that the certification that the candidate does not owe any outstanding fees, fines, or penalties pursuant to the

Campaign Finance Disclosure Act does not apply to him as he is a candidate for representative in the United States House of Representatives.

La. R.S. 18:463(A)(2)(a) provides in pertinent part:

> The notice of candidacy also shall include a certificate, signed by the candidate, certifying that he has read the notice of his candidacy, that he meets the qualifications of the office for which he is qualifying . . . that he acknowledges that he is subject to the provisions of the Campaign Finance Disclosure Act (R.S. 18:1481 et seq.) if he is a candidate for any office other than United States senator, representative in congress, or member of a committee of a political party, that he does not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act, and that all of the statements contained in it are true and correct.

This Court notes that with respect to the Campaign Finance Disclosure Act. La. R.S. 18:463(A)(2)(a) requires that a candidate make two distinct certifications: (1) that he is subject to the provisions of the Campaign Finance Disclosure Act if he is a candidate for any office other than the specified exempted offices, and (2) that he does not owe any outstanding fines or fees pursuant to the Campaign Finance Disclosure Act. La.R.S. 18:1483(3)(a) excludes candidates for the office of representative in Congress are

from the definition of candidates subject to the Campaign Finance Disclosure Act. Accordingly, La. R.S. 463(A)(2)(a) excludes a candidate for this office from acknowledging that he is subject to the Act. While as a candidate for representative in congress Fahrenholtz is not subject to the Campaign Finance Disclosure Act, this Court finds that under La. R.S. 18:463(A)(2)(a) Fahrenholtz is still required to certify that he does not owe any fees pursuant to the Campaign Finance Disclosure Act.

As Fahrenholtz admittedly owes approximately $15,000 in outstanding fines and fees, his certification that he does not owe any outstanding fees or fines pursuant to the Campaign Finance Disclosure Act is false. La. R.S. 18:492 sets forth the grounds for an objection to candidacy of a person who has qualified as a candidate for a primary election. One of the grounds enumerated under this section is the candidate's false certification on his notice of candidacy that he does not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act. Therefore, Fahrenholtz's Exception of No Cause of Action is hereby overruled and Fahrenholtz is disqualified from candidacy for the Second Congressional District for the United States House of Representatives.

Signed at New Orleans, Louisiana, this 22 day of July, 2008 at 11:59 a.m.

/s/ Nadine Ramsey
Nadine M. Ramsey, Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JAMES L. "JIMMY" FAHRENHOLTZ

VERSUS

JAY DARDENNE, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE AND COMMISSIONER OF ELECTIONS

CIVIL ACTION NO. 08-4098

SECTION M

ORDER

(Filed Aug. 6, 2008)

A number of years ago, the then Chief Justice assigned me to serve on the State-Federal Committee of the Judicial Council. It became a definite learning experience. Made up of state and federal judges, the committee dealt with all manner of state-federal jurisdiction and the issues of comity, abstention and *res judicata*.

Here, the mover for the Temporary Restraining Order in this Court has filed in the State District Court, appealed to the State Court of Appeal, and thereafter, to the State Supreme Court. All have responded with alacrity.

This matter is *res judicata*. In the case of *England v. Louisiana State Bd. Of Medical Examiners*,

375 U.S. 411, 419 (1964), the United States Supreme Court said, "[W]e see no reason why a party, after unreservedly litigating his federal claims in the state courts although not required to do so, should be allowed to ignore the adverse state decision and start all over again in the District Court. Such a rule would not only countenance an unnecessary increase in the length and cost of the litigation; it would also be a potential source of friction between the state and federal judiciaries."

Never easy to resolve, these close calls are exemplified by the five-five vote of the Honorable Court of Appeal for the Fourth Circuit.

> Federal law is enforceable in state courts not because Congress has determined that federal courts would otherwise be burdened or that state courts might provide a more convenient forum – although both might well be true – but because the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature. The Supremacy Clause makes those laws "the supreme Law of the Land," and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure. "The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. . . . The two together form one system of jurisprudence, which constitutes the law of

> the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent." *See Howlett v. Rose,* 496 U.S. 356, 367 (1990).

Accordingly, the Court finds that this matter was resolved in the Louisiana state courts. The motion for Temporary Restraining Order is successfully challenged by the affirmative defenses of collateral estoppel and *res judicata*, making Defendant's Motion moot. The case is dismissed with prejudice, each party to bear its own costs.

New Orleans, Louisiana, this 6th day of August, 2008.

[@4:30 p.m.] /s/ Peter Beer
Peter Beer
United States District Judge

FROM: CLERK OF THE SUPREME COURT OF LOUISIANA

On the 30th day of July, 2008, the following actions were taken by the Supreme court of Louisiana in the cases listed below:

* * *

WRIT APPLICATION DENIED:

2008-C-1680 CONRAD S.P. WILLIAMS, III v. JAMES "JIMMY" FAHRENHOLTZ; AND JAY DARDENNE, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE AND COMMISSIONER OF ELECTIONS FOR THE STATE OF LOUISIANA (Parish of Orleans)

WEIBER, J., would grant.

La. R.S. 18:463

§ 463. Notice of candidacy; financial statements; political advertising; penalties

A. (1)(a) A notice of candidacy shall be in writing and shall state the candidate's name, the office he seeks, the address of his domicile, the parish, ward, and precinct where he is registered to vote, and the political party, if any, with which he is registered as being affiliated. No candidate shall change or add his political party designation, for purposes of printing on the election ballot as required by R.S. 18:551(D), after he has qualified for the election.

(b) The candidate shall designate in the notice the form in which his name shall be printed on the ballot. The candidate may designate his given, first, and middle name, the initials of his given, first, and middle name, a nickname, or any combination thereof as the form in which his name shall be printed on the ballot, but he shall not designate a title, designation, or deceptive name, nor shall he designate an occupational or professional description or abbreviation. If the candidate designates a nickname in place of or in combination with his given name or the initials thereof, the nickname shall be set off with quotation marks and shall be placed immediately preceding his surname. A candidate shall include his surname in his designation of the form in which his name shall be printed on the ballot.

(c) When an agent files a notice of candidacy on behalf of a candidate, the agent shall file with the

qualifying official an affidavit attesting that the agent has the authorization and consent of the candidate to file the notice.

<Text of par. (A)(2) effective until January 1, 2009>

(2)(a) The notice of candidacy also shall include a certificate, signed by the candidate, certifying that he has read the notice of his candidacy, that he meets the qualifications of the office for which he is qualifying, that he is not currently under an order of imprisonment for conviction of a felony, that he is not prohibited from qualifying as a candidate for conviction of a felony pursuant to Article I, Section 10 of the Constitution of Louisiana, that he has attached to the notice of his candidacy the financial statement required by Subsection B of this Section, if applicable, that he acknowledges that he is subject to the provisions of the Campaign Finance Disclosure Act (R.S. 18:1481 et seq.) if he is a candidate for any office other than United States senator, representative in congress, or member of a committee of a political party, that he does not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act, and that all of the statements contained in it are true and correct. The certificate shall be executed before a notary public or shall be witnessed by two persons who are registered to vote on the office the candidate seeks. If the candidate is serving outside the state with the armed forces of the United States, his notice of candidacy shall be witnessed by a commissioned officer in the armed forces of the United States.

(b) For the purposes of this Paragraph, "outstanding fine, fee, or penalty" shall mean a fine, fee, or penalty equal to an amount of two hundred fifty dollars or more assessed by order of the Supervisory Committee on Campaign Finance Disclosure pursuant to the Campaign Finance Disclosure Act which has been converted into a court order for which all appeals have been exhausted or a judgment of a district court assessing civil penalties pursuant to the Campaign Finance Disclosure Act which has become executory pursuant to R.S. 18:1511.5. "Outstanding fine, fee, or penalty" shall not mean any fine, fee, or penalty which has been paid in full or for which the candidate is in compliance with a payment plan established in writing between the Supervisory Committee on Campaign Finance Disclosure and the candidate.

<Text of par. (A)(2) effective until January 1, 2009>

(2)(a) The notice of candidacy also shall include a certificate, signed by the candidate, certifying all of the following:

(i) That he has read the notice of his candidacy.

(ii) That he meets the qualifications of the office for which he is qualifying.

(iii) That he is not currently under an order of imprisonment for conviction of a felony, that he is not prohibited from qualifying as a candidate for conviction of a felony pursuant to Article I, Section 10 of the Constitution of Louisiana.

(iv) That he has attached to the notice of his candidacy the financial statement required by Subsection B of this Section, if applicable.

(v) That he acknowledges that he is subject to the provisions of the Campaign Finance Disclosure Act (R.S. 18:1481 et seq.) if he is a candidate for any office other than United States senator, representative in congress, or member of a committee of a political party, that he does not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act.

(vi) That he does not owe any outstanding fines, fees, or penalties pursuant to the Code of Governmental Ethics.

(vii) That all of the statements contained in it are true and correct.

(b) The certificate shall be executed before a notary public or shall be witnessed by two persons who are registered to vote on the office the candidate seeks. If the candidate is serving outside the state with the armed forces of the United States, his notice of candidacy shall be witnessed by a commissioned officer in the armed forces of the United States.

(c) For the purposes of this Paragraph, "outstanding fine, fee, or penalty" shall mean a fine, fee, or penalty equal to an amount of two hundred fifty dollars or more assessed by order of the Supervisory Committee on Campaign Finance Disclosure pursuant to the Campaign Finance Disclosure Act which has been

converted into a court order for which all appeals have been exhausted or a judgment of a district court assessing civil penalties pursuant to the Campaign Finance Disclosure Act which has become executory pursuant to R.S. 18:1511.5. "Outstanding fines, fees, or penalties pursuant to the Code of Governmental Ethics" shall mean a fine, fee, or penalty equal to an amount of two hundred fifty dollars or more imposed by the Board of Ethics for which all appeals have been exhausted. "Outstanding fine, fee, or penalty" shall not mean any fine, fee, or penalty which has been paid in full or for which the candidate is in compliance with a payment plan established in writing between the Supervisory Committee on Campaign Finance Disclosure and the candidate or the Board of Ethics and the candidate is applicable.

(3) The notice of candidacy also shall include a certificate, signed by the candidate, certifying that he is knowledgeable of the laws governing election offenses as provided in Chapter 10 of this title and that he is knowledgeable of the prohibitions relative to erecting, displaying, or posting political campaign signs on any highway right-of-way, publicly owned property or right-of-way, or to or on any public utility pole or stanchion, as provided in R.S. 48:34(D), R.S. 30:2544(A), and R.S. 18:1470. Except as provided in R.S. 30:3544, whoever so erects, displays, or posts political campaign signs on any publicly owned property or right-of-way, or to or on any public utility pole or stanchion shall be guilty of a misdemeanor and

shall be fined not in excess of one hundred dollars or imprisoned for not more than thirty days, or both.

(4) An agent who files a notice of candidacy without the authorization or consent of the candidate to file such notice of candidacy shall be guilty of a misdemeanor and shall be fined not in excess of five hundred dollars or imprisoned for not more than thirty days, or both.

<Text of subsec. B effective until January 1, 2009>

B. (1) At the time that each person who seeks to become a candidate for the office of governor files the notice of candidacy required by R.S. 18:463(A), he shall also file a financial statement with the Board of Ethics. The financial statement shall include the information required in R.S. 42:1124(B) and shall be current as of the date on which it is filed. The candidate shall attach to the financial statement his affidavit certifying that the information contained in the statement is true and correct to the best of his knowledge, information, and belief.

(2) Whoever fails to file a financial statement required by this Section, or knowingly and wilfully fails to timely file any such statement, or knowingly and wilfully fails to disclose or to accurately disclose any information required by this Section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars. Whoever wilfully and intentionally files a false report required by this Section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than

one thousand dollars nor more than five thousand dollars or imprisoned in parish prison for not less than six months, or both.

<Text of subsec. B effective January 1, 2009>

B. Repealed by Acts 2008, 1st Ex. Sess., No. 1, § 3, eff. January 1, 2009.

C. On the forms for notice of candidacy which are prepared, printed, and distributed by the secretary of state, a notice shall be printed below the signature line which shall inform the candidate that copies of the forms and pamphlets of explanation and instruction which are distributed by the Supervisory Committee on Campaign Finance Disclosure are available from the clerk of court or the committee, and that information contained in the notice of candidacy may be posted on the website of the secretary of state as determined by the secretary of state.

D. Not later than the Friday before the opening of the qualifying period for any primary election, the Supervisory Committee on Campaign Finance Disclosure shall deliver a sufficient number of informational packets containing reporting forms and instructions to all officials with whom candidates will qualify for such primary election. The informational packet shall include a notice to the candidate that questions concerning the Campaign Finance Disclosure Act should be addressed to the Supervisory Committee on Campaign Finance Disclosure, not the official with whom the candidate qualifies. If a candidate qualifies in person, such informational packets

shall be distributed to each candidate upon receipt of the candidate's notice of candidacy by the official with whom the candidate qualifies for office. If a candidate qualifies by submitting his notice of candidacy by certified mail, commercial carrier, or agent, such informational packets shall be mailed to the candidate at the address of his domicile as set forth in the notice of candidacy within forty-eight hours after receipt of the notice of candidacy.

E. No changes to the information contained in a notice of candidacy shall be made after the close of qualifying, except to correct an error made by the qualifying official who entered the information contained in the notice of candidacy into the database of the Department of State.

F. The Board of Ethics shall work in conjunction with the attorney general to create informational packets summarizing provisions of the laws relative to dual officeholding and laws under the jurisdiction of the board applicable to public officials relative to conflicts of interest and prohibited transactions, payments, contracts, and employment. The Board of Ethics shall provide such an informational packet in the same manner as provided in Subsection D of this Section to any candidate who qualifies for office.

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No. 08-236

Supreme Court, U.S.
FILED
OCT 22 2008
OFFICE OF THE CLERK

In The

Supreme Court of the United States

JAMES L. "JIMMY" FAHRENHOLTZ,

Petitioner,

vs.

CONRAD S.P. WILLIAMS, III, and
JAY DARDENNE, IN HIS OFFICIAL CAPACITY
AS LOUISIANA SECRETARY OF STATE,

Respondents.

On Petition For Writ Of Certiorari To The Louisiana Fourth Circuit Court Of Appeal

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI OF JAY DARDENNE

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October, 2008

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QUESTION PRESENTED

1. Whether this Court has jurisdiction under 28 U.S.C. § 1257 to review Petitioner's federal constitutional claim where Petitioner failed to properly present the constitutional claim to the state courts and the state court said "constitutionality is not an issue under review by this Court."

LIST OF ALL PARTIES

1. James L. "Jimmy" Fahrenholtz
   Defendant and Petitioner

2. Conrad S.P. Williams, III
   Plaintiff and Respondent

3. Jay Dardenne, in his official capacity as
   Secretary of State, State of Louisiana
   Defendant and Respondent

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OPINIONS BELOW

The list of lower court citations set forth at page 1 of the Petition does not include the citation for the Louisiana Supreme Court writ denial, *Williams v. Fahrenholtz*, 2008-1680 (La. 7/30/08), 986 So.2d 671.

COUNTER-STATEMENT OF JURISDICTION

Petitioner's STATEMENT OF THE CASE is incorrect when it asserts on p. 11 that "at trial, Fahrenholtz filed a Peremptory Exception of No Cause of Action asserting that . . . such application was an unconstitutional qualification on a congressional candidate in violation of U.S. Const., Art. I, § 2, cl. 2, . . . ". As noted by the Louisiana Fourth Circuit Court of Appeal (Petition, App. 5), "Mr. Fahrenholtz's first mention of unconstitutionality was in a memorandum and not in a pleading, hence, constitutionality is not an issue under review by this Court."

Respondent Dardenne submits that this Court does not have jurisdiction under 28 U.S.C. § 1257(a) because the purported federal question posed in the Petition For Writ of Certiorari was not decided by the state courts. Accordingly, federal question jurisdiction is lacking. *Exxon v. Eagerton,* 462 U.S. 176, 181, n. 3 (1983); *Webb v. Webb*, 451 U.S. 493, 497-500 (1981); *Cardinale v. Louisiana*, 394 U.S. 437, 438-439 (1933).

STATEMENT OF THE CASE

1. On July 11, 2008, Applicant, James L. "Jimmy" Fahrenholtz, filed a Notice of Candidacy for the office of United States Representative, Louisiana Second Congressional District, with Respondent, the Louisiana Secretary of State. The Notice of Candidacy included the certification that Fahrenholtz did "not owe any outstanding fines, fees or penalties pursuant to the Campaign Finance Disclosure Act."

2. On July 18, 2008, Respondent, Conrad S.P. Williams, III, filed a "Petition To Disqualify Candidate" against Fahrenholtz in a Louisiana state court. As required by law, La. R.S. 18:1402A(2), Respondent, Jay Dardenne, in his capacity as Secretary of State, was a party to the suit. The petition sought disqualification of Fahrenholtz's candidacy under La. R.S. 18:492(5) for falsely certifying on the notice of candidacy that he did not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act.

3. On the morning of trial, Fahrenholtz filed "Peremptory Exception of No Cause of Action" alleging that La. R.S. 18:463(A)(2)(a) specifically exempts candidates for the United States House of Representatives from certifying that they do not owe any sums pursuant to the Campaign Finance Disclosure Act, and that the petition failed to set forth a cause of action to disqualify Fahrenholtz "for an alleged false certification of a matter which he is specifically exempted from." The memorandum in support of this

exception mentioned U.S. Const., Art. I, § 2, cl. 2, as providing the qualifications for members of Congress.

4. At trial on July 22, 2008, Fahrenholtz stipulated that he did owe approximately $15,000 in outstanding fines and fees. The trial judge found the certification made by Fahrenholtz on the notice of candidacy to be false. The exception of no cause of action was overruled and Fahrenholtz was disqualified as a candidate for Congress.

5. Fahrenholtz appealed to the Louisiana Fourth Circuit Court of Appeal. On July 25, 2008, the appellate court affirmed the judgment of the trial court. The opinion noted Fahrenholtz's claim made there that the certification was unconstitutional under U.S. Const., Art. I, § 2, cl. 2, "is not an issue under review by this court," finding that Fahrenholtz failed to satisfy requirements of Louisiana law for challenging constitutionality of a statute.

6. On July 30, 2008, the Louisiana Supreme Court denied Fahrenholtz's writ application. *Williams v. Fahrenholtz*, 2008-1680 (La. 7/30/98), 986 So.2d 671.

7. The Democratic Party Primary election for the Louisiana Second Congressional District was held on October 4, 2008, the election originally scheduled for September 6, 2008, having been rescheduled as a result of Hurricane Gustav.

REASONS FOR DENYING THE WRIT

I. The Federal Question Posed Was Neither Properly Presented To Nor Decided By The State Court

Whether jurisdictional, or prudential, subject to only very rare exceptions, in reviewing state court judgments under 28 U.S.C. § 1257(a), this Court will not consider a petitioner's federal claim "unless it was either addressed by, or properly presented to the state court that rendered the decision we have been asked to review." *Adams v. Robertson,* 520 U.S. 83, 86 (1997). The Louisiana courts did not address the federal constitutional question; the Louisiana appellate court stated "constitutionality is not an issue under review by this Court."

The state court's refusal to address the federal constitutional issue is explained in its opinion:

> "Mr. Fahrenholtz avers that the certification is an unconstitutional qualification. However, the constitutionality of a statute must first be questioned in the trial court and must be specifically pled. *Vallo v. Gayle Oil Co., Inc.*, 94-1238 (La. 11/30/94), 646 So.2d 859, 863. Specifically, 1) the constitutionality of a statute must first be questioned in the trial court, not the court of appeal; 2) the plea of unconstitutionality must be specifically pleaded to be considered by the trial court; and 3) the attorney general is an indispensable party who must be served." *Id., citing Lemire v. New Orleans Public Service,*

> *Inc.*, 458 So.2d 1308, 1311 (La. 1984). Mr. Fahrenholt's first mention of unconstitutionality was in a memorandum and not in a pleading, hence, constitutionality is not an issue under review by this Court. *Hillman v. Akins*, 93-0631 (La. 1/14/94), 631 So.2d 1, 5." *Williams v. Fahrenholtz*, 2008-0961, p. 4, n. 1 (La. App. 4 Cir. 7/25/08), 2008 WL 2861718, *2, n. 1.

The constitutional claim was not addressed by the state court as it was not properly presented to the state court under specific pleading requirements of Louisiana law. Fahrenholtz's claim that he had no opportunity to specifically plead the unconstitutionality of the state statute because there was no unconstitutional harm until after the state court rendered its decision is an argument that not only defies logic but is a misrepresentation. As noted in fn. 1 of the Louisiana appellate court opinion, Fahrenholtz did attempt to raise unconstitutionality in state court. But because Fahrenholtz urged unconstitutionality there in a memorandum and not a pleading, the Fourth Circuit found that "constitutionality is not an issue under review by this Court." Fahrenholtz did raise the constitutional issue in state court, he just did not raise it properly in order to have the state court consider the issue.

This Court "held early on that § 25 of the Judiciary Act of 1789 furnished us with no jurisdiction unless a federal question had been both raised and decided in the state court below. As Justice Story

wrote in *Crowell v. Randell,* 10 Pet. 368, 391, 9 L.Ed. 458 (1836), 'If both of these requirements do not appear on the record, the appellate jurisdiction fails.'" *Illinois v. Gates*, 462 U.S. 213, 218, 103 S.Ct. 2317, 2321, 76 L.Ed.2d 527 (1983).

Petitioner failed to carry his burden of showing that the federal question raised in the Petition for Certiorari was properly presented to or addressed by the Louisiana court.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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October, 2008

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(3)

No. 08-236

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

JAMES "JIMMY" FAHRENHOLTZ,

Petitioner,

v.

CONRAD S. P. WILLIAMS, III, *ET AL.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, FOURTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT CONRAD S.P. WILLIAMS, III

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STATEMENT OF THE CASE

A. Facts:

Applicant, James "Jimmy" Fahrenholtz, filed a Notice of Candidacy ("Notice") for the Democratic Primary Election for the Second Congressional District[1] with the Louisiana Secretary of State on July 11, 2008. Said Notice of Candidacy was filed pursuant to La.R.S. § 18:1274. Among the various certifications required in said Notice are the following:

a) that he does not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act ("CFDA"); and

b) that all of the statements contained in it are true and correct.

La.R.S. § 18:463(2)(a).

Utilizing the procedures set forth in La.R.S. §§ 18:1275.18 and 1401 *et seq.*, Respondent, Conrad S.P. Williams, III, filed suit challenging Fahrenholtz's candidacy on the grounds that Fahrenholtz falsely certified on his notice of candidacy that he does not owe any outstanding fines, fees, or penalties pursuant to the CFDA. La.R.S. § 18:492(5).

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[1] The Primary was originally scheduled for September 6, 2008 then postponed until October 4, 2008 as a result of Hurricane Gustav.

B. Action of the Civil District Court for the Parish of Orleans:

This matter was tried in the Civil District Court for the Parish of Orleans on July 22, 2008. At trial, Fahrenholtz admitted to owing approximately $15,000 in outstanding fines pursuant to the CFDA and that he signed the Notice despite the existence of said fines. Relying upon Louisiana law, the court upheld Williams' challenge and entered a judgment disqualifying Fahrenholtz from the upcoming election.

C. Action of the Louisiana Fourth Circuit Court of Appeal:

An appeal was lodged with the Fourth Circuit Court of Appeal, which held oral argument on July 24, 2008. On July 25th, an equally split court, relying upon Louisiana law, entered judgment affirming the judgment of the trial court noting that Fahrenholtz did not properly raise issues related to the constitutionality of the statutes applied herein. *Williams v. Fahrenholtz,* 2008-0961, p.4, n.1 (La.App. 4th Cir. 7/25/08), __ So.2d __, 2008 WL 2861718, *2, n.1.

D. Action of the Louisiana Supreme Court:

On July 30, 2008, the Louisiana Supreme Court denied Fahrenholtz's writ application. *Williams v. Fahrenholtz,* 2008-C-1680 (La. 7/30/08), 986 So.2d 671.

LAW AND ARGUMENT

A. This Court Lacks Jurisdiction to Consider this Writ Application:

Certiorari jurisdiction over decisions from state courts derives from 28 U.S.C. § 1257, which provides that "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where"

1: "the validity of a treaty or statute of the United States is drawn in question . . . ,"

2. "the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or"

3. "any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

This Court

> "held early on that § 25 of the Judiciary Act of 1789 furnished us with no jurisdiction unless a federal question had been both raised and decided in the state court below. As Justice Story wrote in *Crowell v. Randell*, 10

> Pet. 368, 391, 9 L.Ed. 458 (1836), 'If both of these requirements do not appear on the record, the appellate jurisdiction fails.'"

Illinois v. Gates, 462 U.S. 213, 218; 103 S.Ct. 2317, 2321; 76 L.Ed.2d 527 (1983).

> In cases coming here from state courts in which a state statute is assailed as unconstitutional, there are reasons of peculiar force which should lead us to refrain from deciding questions not presented or decided in the highest court of the state whose judicial action we are called upon to review. Apart from the reluctance with which every court should proceed to set aside legislation as unconstitutional on grounds not properly presented, due regard for the appropriate relationship of this Court to state courts requires us to decline to consider and decide questions affecting the validity of state statutes not urged or considered there. It is for these reasons that this Court . . . consistently refuses to consider any grounds of attack not raised or decided in that court.

Gates, 462 U.S. at 218-19; 103 S.Ct. at 2322 (citing, *McGoldrick v. Compagnie Generale*, 309 U.S. 430, 435-436, 60 S.Ct. 670, 673, 84 L.Ed. 849 (1940)). *See also, Adams v. Robertson*, 520 U.S. 83, 117 S.Ct. 1028, 137 L.Ed.2d 203 (1997); *Webb v. Webb*, 451 U.S. 493, 498-500; 101 S.Ct. 1889, 1893-4; 68 L.Ed.2d 392 (1981).

In the present case, although Fahrenholtz made reference to the constitutionality of applying the Louisiana statutes to his candidacy in various briefs submitted to the district court, court of appeal and state supreme court, Fahrenholtz never took the necessary steps to properly challenge said constitutionality, a defect noted by the Louisiana Fourth Circuit Court of Appeal:

> Mr. Fahrenholtz avers that the certification is an unconstitutional qualification. However, the constitutionality of a statute must first be questioned in the trial court and must be specifically pled. Specifically, 1) the constitutionality of a statute must first be questioned in the trial court, not the court of appeal; 2) the plea of unconstitutionality must be specifically pleaded to be considered by the trial court; and 3) the attorney general is an indispensable party who must be served." Mr. Fahrenholt's (*sic*) first mention of unconstitutionality was in a memorandum and not in a pleading, hence, constitutionality is not an issue under review by this Court.

Williams v. Fahrenholtz, 2008-0961, p.4, n.1 (La.App. 4 Cir. 7/25/08), 2008 WL 2861718, *2, n.1.

B. Fahrenholtz had Adequate Opportunity to Properly Challenge the Constitutionality of the Statutes Below:

Although Fahrenholtz argues that he did not have the practical ability to properly raise a constitutionality challenge below due to the time constraints set forth in La.R.S. § 18:1401 *et seq.*, this is not the case. Admittedly, La.R.S. § 18:1409 establishes certain timeframes for commencing trial and issuing its judgment; however, no limitation is placed on the duration of the trial.

The relevant portions of La.R.S. § 18:1409 provide that "trial shall begin no later than 10:00 a.m. on the fourth day after suit was filed" and that "the trial judge shall render judgment within twenty-four hours after the case is submitted to him. . . ." La.R.S. § 18:1409(A)(1) & (C). There exist no limitations on the duration of the trial or the ability of the judge to suspend proceedings to allow a candidate, such as Fahrenholtz, to properly file a constitutional challenge.

Had Fahrenholtz sought leave to properly raise his constitutional challenge, rather than merely making reference to his constitutionality claims in briefs submitted to the courts, he could have filed a petition for declaratory judgment in the district court seeking issuance of an injunction that would likewise be heard on an expedited basis along with the challenge to his candidacy. See La. Code Civ. Pro. Arts. 1871 *et seq.* (Declaratory judgments), & 3601 *et seq.* (Injunction, Art. 3602 – application for preliminary injunction shall be heard within two days of filing). If Fahrenholtz had

followed these procedures, the trial would have been delayed a mere two days and his constitutional defenses would have been properly preserved for appeal.

CONCLUSION

Since Fahrenholtz's constitutional challenge was never "pressed or passed on below" he cannot assert those claims for the first time before this Court. Wherefore, Respondent, Conrad S.P. Williams, III, respectfully submits that this Court lacks jurisdiction to consider Fahrenholtz's writ application and that said application be denied.

Respectfully submitted,

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